



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

September 13, 2008

MEMORANDUM

TO: Federal Communications Commission – DA 08-1913;
WT Docket No. 08-165

FROM: Richard W. Barks, Manager, Airport Development

SUBJECT: Wireless Telecommunications Bureau Seeks Comment on Petition for
Declaratory Ruling by CTIA – The Wireless Association To Clarify
Provisions Of Section 332(c)(7)(B) To Ensure Timely Siting Review and
To Preempt Under Section 253 State and Local Ordinances That Classify
All Wireless Siting Proposals as Requiring a Variance

The North Carolina Department of Transportation's (NCDOT) Division of Aviation has concerns and comments to offer on the above mentioned CTIA petition for declaratory ruling. The NCDOT Division of Aviation builds and improves a statewide system of 72 publicly owned and operated airports. The State of North Carolina puts millions of dollars annually into this system of airports for capital improvements to make these airports as serviceable and safe for the flying public as possible. Additionally the Federal Aviation Administration (FAA) invests millions of dollars annually in North Carolina for the same purpose. Both the FAA and State of North Carolina require that these locally, publicly owned and operated airports protect this investment of public funds by enacting local zoning, ranging from a height ordinance up to and including land use.

Cell towers if not properly sited can and have caused conflicts with these public airports both from a safety standpoint and from an ultimate utilization of the facility. Although FAA reviews tower construction if notified from a potential hazard/no hazard standpoint this review is informational only. The only way that the airport can be protected is by local zoning requirements.

The proposed petition if approved asks the FCC to declare limitations on local zoning authority as it affects cell tower siting that could potentially have a negative and detrimental impact on these local airports that could potentially reduce serviceability and more importantly safety of the flying public. Several of the issues as we understand them

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in this petition that concern use are the relative short mandatory time frames that grant approval of cell tower applications if this deadline is missed by local government. Communication and circulation of FCC applications through local government units can be problematic and these timeframes coupled with automatic approvals if missed is at a minimum detrimental to the local zoning protection of these publicly funded airports. The petition appears to prevent localities from considering the presence of service by other carriers in evaluating additional carrier's application for an antenna site. This again can have a negative impact on local airports by increasing the number of potential obstructions to air navigation. The petition also preempts local ordinances that would require a variance for every tower application which could for example effectively make a height overlay ordinance ineffective and thus completely defeat its purpose to protect the airport.

The NCDOT Division of Aviation is opposed to this petition as presented due to the potential detrimental impacts on local airports. Additionally we would like to request that more time be granted for comments; we have forwarded the petition and our comments to the North Carolina's Attorney General's Office for further review and comment.